

Chapter 8—

What is eminent domain?

The California State Constitution provides that local governing bodies, including redevelopment agencies, have the authority to assemble private property for the sole purpose of accomplishing a necessary public benefit project. The law of eminent domain (condemnation) may only be used for a public purpose and requires that the private property owner be justly compensated for their property, meaning that he or she must be paid fair market price for the property.

Redevelopment agencies very rarely use eminent domain. This is because eminent domain may only be utilized after negotiations between the agency and the private property owner fail. In most cases, the benefits and profits to be gained by the private property owner are clear. When eminent domain is used, it is typically because the well being of the residents or businesses in the project area are in jeopardy. Occasionally redevelopment agencies might also use eminent domain to condemn hazardous and dilapidated structures located in economically weak areas.

Why is eminent domain so rarely used?

Because no redevelopment agency wants to acquire someone's home or business by condemnation. Many redevelopment agencies place additional restrictions on their eminent domain powers in their redevelopment plans. Some exclude all residential properties; others limit their use to a small part of a project area.

In all cases, negotiated settlements for property

assembly that are acceptable and fair to both the agency and the seller are the primary goal.

Why do redevelopment agencies have the ability to condemn and assemble private property?

Condemnation is sometimes necessary to revitalize a dilapidated area. At times, the public good must take precedence over private property rights, so long as property owners receive just compensation for their land.

A redevelopment agency only uses eminent domain when necessary to accomplish projects that would not be feasible for the private market or to accomplish public infrastructure or buildings. The public agency must hold public hearings, pay the owner fair market value, and provide relocation benefits and assistance.

Are redevelopment agencies restricted in their use of eminent domain?

Yes. Redevelopment agencies' use of condemnation powers is subject to strict restrictions above those applied to other government entities.

The CRL requires notice and hearings if an agency is considering condemnation, as well as

owner participation under conditions. In general, redevelopment agencies' ability to use eminent domain is restricted to 12 years. Agencies must notify and explain to all property owners about eminent domain, and what it would entail if used in the project area.

What are a property owner's rights? And how soon will a property owner know what is happening?

State laws safeguard the property rights of private citizens. In granting the ability for local government agencies to use eminent domain, the state legislature balanced the needs of the government and property owners by incorporating procedural and substantive rights in the condemnation law. In order to exercise the power of eminent domain, government agencies must:

- ◆ Provide property owners with notice of the government's need to acquire the property;
- ◆ Hire an expert appraiser; and
- ◆ Make a written offer to the owner.

In addition, redevelopment agencies regularly send notices to businesses and residents who are directly affected by redevelopment activities as part of their dedication to keeping interested parties informed. And project area committees or redevelopment advisory committees are also used to facilitate communication between citizens and the redevelopment agency.

How much would I be paid if my property was acquired by eminent domain?

If a redevelopment agency must acquire property within the project area, the agency must pay fair market value for the land and improvements, as the

law requires. Independent and neutral private appraisers determine fair market value or the prices your property would sell for if you were to sell your house or business. In addition to getting a fair price for the property, the agency must offer relocation assistance and allowances to defray certain costs and alleviate the inconvenience of the move. If the parties cannot agree on fair market value, a judge or jury looks at all of the evidence, including appraisals, and makes the final determination regarding the value of the property.

Many agencies go above and beyond statutory relocation provisions, to provide even more for the property owner with the goal of putting him or her in a better place than before the redevelopment was needed.

What are the unique tax advantages to me, as a property owner, if eminent domain is used?

Both state and federal law offer tax advantages if you convey your property to a public agency due to condemnation or, under federal tax law, the threat of condemnation.